

Application Number 10/730,873
Amendment dated June 16, 2006
Responsive to Office Action mailed March 16, 2006

REMARKS

This Amendment is responsive to the Final Office Action dated March 16, 2006. Applicant has amended claims 1, 32, 36, 47, and 56, and cancelled claims 9, 35, 46 and 50. Claims 52 and 57-59 were cancelled in a previous submission. Accordingly, claims 1-8, 10-34, 36-45, 47-49, 51, 53-56, and 60-66 are pending.

As an initial matter, Applicant thanks the Examiner for clarifying the status of some of the claims in a brief telephone conversation with Applicant's representative on June 14, 2006. The Examiner indicated that claims 9, 26, 35, 36, 46, 50, 54, 56, 60 and 61 were not rejected under 35 U.S.C. § 103, but instead only rejected under the judicially created doctrine of obviousness-type double patenting.

Independent claims 1, 32 and 47 as previously presented were rejected under section 103. Applicant has amended independent claims 1, 32 and 47 to include the subject matter of claims 9, 35 and 50, respectively, which were not rejected under section 103.¹ The other independent claim, claim 56, was not rejected under section 103. Accordingly, each of independent claims 1, 32, 47 and 56 includes subject matter the Examiner has indicated is allowable if the obviousness-type double patenting rejections are overcome.

Applicant submits herewith a terminal disclaimer overcoming the obviousness-type double patenting rejections of claims 9, 35, 50 and 56, and therefore overcoming the obviousness-type double patenting rejections of independent claims 1, 32, 47 and 56 as presented after amendment. The only one of the obviousness-type double patenting rejections in the Final Office Action that was applied to claims 9, 35, 50 and 56, was the rejection of claims 1-9, 12-22, 31, 32-36, 39-41, 45-50, 56, 60-61, 63, 64 and 66 as being unpatentable over claims 1-27 of copending Application No. 10/731,881. Therefore, Applicant submits a terminal disclaimer with respect to copending Application No. 10/731,881.

¹ Applicant has also amended independent claim 56 to correct a typographical error. Applicant respectfully requests entry of the after-final claim amendments. Applicant submits that the claim amendments do not raise new issues, and will not require further search. Applicant further submits that the claim amendments place the application in condition for allowance.

Application Number 10/730,873
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Applicant respectfully suggests that all of the claim rejections in the Final Office Action have been overcome by the claim amendments and submission of the terminal disclaimer. Applicant respectfully requests that the rejections be withdrawn.

Claim Rejections Under 35 U.S.C. § 103

In the Final Office Action, the Examiner rejected claims 1, 3-8, 10-20, 23-25, 27, 30-32, 34, 37-47, 51, 53, 55 and 62-65 under 35 U.S.C. 103(a) as being unpatentable over Fischell et al. (US 6,128,538) and claims 1-6, 10, 12-14, 18-25, 47-49, 51, 53, 63 and 66 under 35 U.S.C. 103(a) as being unpatentable over Bardy. The Examiner also rejected claim 28 under 35 U.S.C. 103(a) as being unpatentable over Fischell et al. in view of Loeb, claim 29 under 35 U.S.C. 103(a) as being unpatentable over Fischell et al. or Bardy in view of Loeb, and claim 33 under U.S.C. 103(a) as being unpatentable over Fischell et al. in view of Bardy.

Applicant respectfully traverses these rejections to the extent such rejections may be considered applicable to the claims as amended. As discussed in greater detail above, Applicant has amended independent claims 1, 32, and 47 to recite subject matter of claims 9, 35 and 50, which were not rejected under section 103. Consequently, these rejections under section 103 are rendered moot, and Applicant respectfully requests that they be withdrawn.

Rejection for Obviousness-type Double Patenting

The Examiner provisionally rejected claims 1-6, 10, 12-14, 18-25, 27, 29, 31, 47-49, 51, 53, 55, 63 and 66 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-83 of copending Application No. 10/837,319.

The Examiner also provisionally rejected claims 1-6, 10, 12-14, 18-22, 23-25, 27, 31, 47-49, 51, 53, 55, 63 and 66 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-7, 9-11 and 14-16 of copending Application No. 10/731,868.

Application Number 10/730,873
Amendment dated June 16, 2006
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The Examiner also provisionally rejected claims 1-6, 10, 12-14, 18-28, 30-31, 47-49, 51, 53-55, 63 and 66 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-25 and 32-34 of copending Application No. 10/835,232 in view of Bardy.

The Examiner also provisionally rejected claims 1-9, 12-22, 31, 32-36, 39-41, 45-50, 56, 60-61, 63, 64 and 66 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-27 of copending Application No. 10/731,881.

Applicant has amended independent claims 1, 32 and 47 to include the subject matter claims 9, 35 and 50, respectively. Claims 9, 35 and 50, as well as independent claim 56, were not rejected over Applications Nos. 10/837,319, 10/731,868 and 10/835,232. Accordingly, the rejections over copending Applications Nos. 10/837,319, 10/731,868 and 10/835,232 are moot. Applicant submits herewith a terminal disclaimer overcoming the rejection over claims 1-27 of Application No. 10/731,881. Applicant respectfully suggests that the claim amendments and terminal disclaimer overcome all of the obviousness-type double patenting rejections

Information Disclosure Statement

With this Amendment, Applicant submits a supplemental Information Disclosure Statement cited one reference. The Information Disclosure Statement includes the fee required by 7 C.F.R. § 1.17(p), and the certification required by 37 C.F.R. § 1.97(e)(2).

Application Number 10/730,873
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CONCLUSION

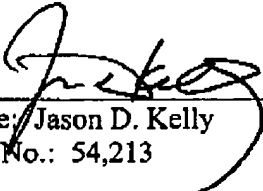
All claims in this application are in condition for allowance. Applicant respectfully requests reconsideration and prompt allowance of all pending claims. Please charge any additional fees or credit any overpayment to deposit account number 50-1778. The Examiner is invited to telephone the below-signed attorney to discuss this application.

Date:

By:

June 16, 2006

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